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2                   IN THE UNITED STATES DISTRICT COURT  
3                   FOR THE EASTERN DISTRICT OF CALIFORNIA  
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7 RUSSELL DWAYNE ROGERS,

8                   Plaintiff,

CV F 02 5713 OWW WMW P

9                   vs.

\_\_\_\_\_ FINDINGS AND RECOMMENDATION

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11 DERRAL ADAMS, , et al.,

12                   Defendants.

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15 Plaintiff is a former state prisoner proceeding pro se. On May 10, 2005, an order  
16 was entered, dismissing the operative complaint for failure to state a claim. Plaintiff was granted  
17 leave to file an amended complaint to correct the identified deficiencies. Plaintiff failed to file an  
18 amended complaint, and the court recommended that this action be dismissed for his failure to  
19 do so. Plaintiff filed objections to the findings and recommendations. In his objections, plaintiff  
20 states that he did not receive the May 10, 2005, order dismissing the complaint.

21                   On July 7, 2005, an order was entered, vacating the recommendation of dismissal  
22 and directing plaintiff to file an amended complaint that addressed the deficiencies identified in  
23 the earlier order dismissing the complaint. Plaintiff has failed to do so within the time allotted.

24                   Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed for  
25 failure to state a claim upon which relief could be granted.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636 (b)(1)(B). Within twenty days after being served with these findings and recommendations, plaintiff may file written objections. Such a document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file objections within the specified time waives all objections to the judge’s findings of fact. See Turner v. Duncan, 158 F.3d 449, 455 (9<sup>th</sup> Cir. 1998). Failure to file objections within the specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

IT IS SO ORDERED.

**Dated:** October 26, 2005  
mmkd34

/s/ William M. Wunderlich  
UNITED STATES MAGISTRATE JUDGE